

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Application Number:** 10/689,478

**Examiner:** Marc A. Patterson, Ph.D.

**Applicant:** Daniel S. Papenfuss, et al.

**Art Unit:** 1794

**Filing Date:** October 20, 2003

**Title:** Tear Initiation and Directional Tear Films and Packages Made Therefrom

**Customer Number:** 30482

**Docket Number:** 20717

**Certificate of Submission**

I hereby certify that this correspondence is being submitted to the United States Patent and Trademark Office via EFS-Web on August 10, 2010 by Christine E. Parsons.

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**PETITION UNDER 37 C.F.R. § 1.705**

This submission is an application for patent term adjustment under 37 C.F.R. § 1.705.

According to the June 24, 2010 Notice of Allowance for Application No. 10/689,478,

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 days.

The applicant acknowledges that the United States Patent and Trademark Office (i.e., the Office) does not calculate and inform the applicant of the patent term adjustment for the three-year pendency provision of 37 C.F.R. § 1.702(b) (based upon 35 U.S.C. § 154(b)(1)(B)) (i.e., 1.702(b) delay) in the notice of allowance. However, so as not to be considered untimely as to issues regarding the prompt responses provision of 37 C.F.R. § 1.702(a) (based upon 35 U.S.C. § 154(b)(1)(A)) (i.e., 1.702(a) delay), the applicant is submitting this application for patent term adjustment. The fee set forth in 37 C.F.R. § 1.18(e) accompanies this petition, which is supported by the following statement of facts.

- (i) As further explained below, the patent term adjustment will be based on the actual issue date of the patent.

The current bases under 37 C.F.R. § 1.702 for the adjustment are as follows:

- (a) 1.702(a) delay: Failure to take certain actions within specified time frames, specifically,
- (1) mail at least one notification under 35 U.S.C. § 132 not later than fourteen months after the date on which the application was filed, and
  - (2) respond to a reply under 35 U.S.C. § 132 not later than four months after the date on which the reply was filed
- (b) 1.702(b) delay: Failure to issue a patent within three years of the actual filing date of the application, but not including
- (4) any time consumed by the filing of a notice of appeal to the Board of Patent Appeals and Interferences.

- (ii) The relevant dates for the 1.702(a) delay and the 1.702(b) delay are as follows:

- (a) 1.702(a) delay: Failure to take certain actions.

	Application Filed / Response Received	Non-Delay Date	Office Response	Delay (Days)
37 CFR 1.702(a)(1)	10/20/03	12/20/04	07/01/05	193
37 CFR 1.702(a)(2)	05/13/09	09/13/09	12/08/09	86**
<b>TOTAL</b>				<b>279</b>
<b>** Office Action of 08/20/09 replaced by Office Action of 12/08/09</b>				

- (b) 1.702(b) delay: Failure to issue a patent within three years, not including time for appeals. The dates for and duration of the 1.702(b) delay are dependent on the actual issue date of the patent. The below table assumes an earliest issue date of September 14, 2010 and a latest issue date of January 4, 2011 and provides the starting point for calculating the 1.702(b) delay.

Application Filed	Non-delay date	Issue date	Delay (Days)
10/20/03	10/20/06	09/14/10	1425
10/20/03	10/20/06	09/21/10	1432
10/20/03	10/20/06	09/28/10	1439
10/20/03	10/20/06	10/05/10	1446
10/20/03	10/20/06	10/12/10	1453
10/20/03	10/20/06	10/19/10	1460
10/20/03	10/20/06	10/26/10	1467
10/20/03	10/20/06	11/02/10	1474
10/20/03	10/20/06	11/09/10	1481
10/20/03	10/20/06	11/16/10	1488
10/20/03	10/20/06	11/23/10	1495
10/20/03	10/20/06	11/30/10	1502
10/20/03	10/20/06	12/07/10	1509
10/20/03	10/20/06	12/14/10	1516
10/20/03	10/20/06	12/21/10	1523
10/20/03	10/20/06	12/28/10	1530
10/20/03	10/20/06	01/04/11	1537

This 1.702(b) delay is then shortened by appeal periods, i.e., the number of days in each period beginning on the date on which a notice of appeal was filed and ending on the date of mailing of an action under 35 U.S.C. § 132. For Application No.10/689,478, two notices of appeal were filed; and the Office responded to each with a 132 action.

The appeal periods are as follows:

Notice of Appeal Received	132 Action Mailed	Days
06/26/06	10/19/06	120
02/22/07	01/25/08	338
<b>TOTAL</b>		<b>458</b>

Therefore, the 1.702(b) delay is 967 days (i.e., 1425 days less 458 days) if the patent issues on September 14, 2010; 1079 days (i.e., 1537 days less 458 days) if the patent issues on January 4, 2011; or between 967 days and 1079 days if the patent issues on a date between September 14, 2010 and January 4, 2011.

Considering the overlap (i.e., 86 of the days attributable to the 1.702(a) delay occurring within the time period of the 1.702(b) delay), the adjustment as specified in 37 C.F.R. § 1.703(f) to which Application No. 10/689,478 is entitled (i.e., the 1.702(a) delay plus the 1.702(b) delay, less overlap) is 1,160 days (i.e., 193 days plus 967 days) if the patent issues on September

14, 2010; 1,272 days (i.e., 193 days plus 1079 days) if the patent issues on January 4, 2011; or between 1,160 days and 1,272 days if the patent issues on a date between September 14, 2010 and January 4, 2011. (This represents the adjustment prior to the reduction for the sum of periods calculated under 37 C.F.R. § 1.704, as explained below).

- (iii) Application No. 10/689,478 is not subject to a terminal disclaimer.
- (iv) According to 37 C.F.R. § 1.704 (based upon 35 U.S.C. § 154(C)), circumstances existed during prosecution of Application No. 10/689,478 that require a reduction of the period of adjustment of patent term, specifically,
  - (b) periods of time in excess of three months taken to reply to any notice or action by the Office making any rejection, objection, argument or other request.

The 1.704(b) circumstances are as follows:

Office Action	3-Month Date	Response Received	Applicant Delay (Days)
01/21/04	04/21/04	04/26/04	5
07/01/05	10/01/05	01/03/06	94
03/22/06	06/22/06	06/26/06	4
10/19/06	01/19/07	02/22/07	34
01/25/08	04/25/08	07/25/08	91
11/13/08	02/13/09	05/13/09	89
12/08/09	03/08/10	03/19/10	11
<b>TOTAL</b>			<b>328</b>

There are no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in 37 C.F.R. § 1.704.

In summary, the patent term adjustment for Application No. 10/689,478 is 832 days (i.e., 1,160 days less 328 days) if the patent issues on September 14, 2010; 944 days (i.e., 1,272 days less 328 days) if the patent issues on January 4, 2011; or between 832 days and 944 days if the patent issues on a date between September 14, 2010 and January 4, 2011.

Based on the above, applicant respectfully applies for a patent term adjustment of 832 days – 944 days (depending on the actual issue date) for Application No. 10/689,478. If there are any

questions or if there is a need for any additional information to ensure the granting of this adjustment, please contact the applicant's attorney at (920) 303-7970.

Respectfully submitted,

Date: August 10, 2010

/Christine E. Parsons/

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